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Bing Li (BL 5550)
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Attorneys for Defendant,
Star Mark Management, Inc.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

★ SEP 28 2005 ★

BROOKLYN OFFICE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

TAI WING WAH RESTAURANT AND
BAKERY, INC., a Canadian corporation,

Plaintiff,

v.


STAR MARK MANAGEMENT, INC., a New
York corporation,

Defendant.

) Civil Action No. 04 Civ. 3945 (JBW)
) (ASC)

)
)
) CONSENT JUDGMENT AND
) PERMANENT INJUNCTION
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WHEREAS, Plaintiff, TAI WING WAH RESTAURANT AND BAKERY, INC.
("Plaintiff"), a Canadian corporation whose primary business is the manufacture, importation,
exportation, and wholesale and retail sale of food products, including baked goods, filed a
complaint in this Court on September 13, 2004 alleging that defendant STAR MARK
MANAGEMENT, INC., a New York corporation ("Defendant"), infringed upon plaintiffs'
WING WAH MOON CAKES ®™, U.S. Trademark Registration No. 1,543,766 ("the



1 Trademark"), in violation of Section 32 of the Lanham Act (15 U.S.C. § 1114) and certain
2 trade dress infringement and unfair competition claims;

3 **WHEREAS**, Defendant appeared in this action by filing an Answer to the Complaint
4 on November 5, 2004, denying the allegations with various affirmative defenses and a
5 counterclaim challenging plaintiff's Trademark under Section 37 of the Lanham Act (15
6 U.S.C. § 1119);

7
8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

9 1. Defendant STAR MARK MANAGEMENT, INC. is hereby permanently
10 enjoined from all use of the words JIA WAH MOON CAKES, in Chinese or English
11 characters, and/or a Peonies Flower Design in any manner or form, and from otherwise
12 using the Trademark and all other confusingly similar marks, in connection with the
13 importation, distribution, advertisement, promotion or sale of Chinese pastries. This
14 injunction as to "all use" by Defendant shall include, but not be limited to: (1) all Internet
15 usage, including domain names, (2) all packaging, labels, brochures, letterhead, promotional
16 materials and any other advertising materials, whether in print, for television or radio
17 broadcast, or for other distribution and (3) any applications to register or registrations with
18 any state or federal agency. This injunction shall be binding upon Defendant, its officers,
19 directors, agents, servants, employees, and attorneys, and upon those persons in active
20 concert or participation with them who receive actual notice of this Order by personal
21 service or otherwise, except to the extent of the 1,600 cases of moon cake of 16 piece counts
22 that Star Mark shipped and sold in the U.S.A. between July 18 and September 14, 2005
23 under the design as shown in the attached and with plaintiff's consent thereto.

24 2. U.S. Registration No. 1,543,766 is valid and incontestable.

25 3. Within fourteen (14) days of entry of this Order, Defendant shall turn over to
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1 Plaintiff's counsel for destruction any and all remaining artwork and inventory of products
2 bearing the infringing mark, or any mark confusingly similar thereto.

3 4. Within fourteen (14) days of entry of this Order, Defendant shall pay Plaintiff
4 \$2,500.

5 5. This is a final judgment. All other claims of the parties are hereby dismissed
6 with prejudice. Each party shall bear its own costs and attorney's fees. If either party
7 institutes any action or proceeding in the future in connection with this Consent Judgment and
8 Permanent Injunction, the prevailing party shall be entitled, in addition to such other relief as
9 may be granted, to be reimbursed by the losing party for all costs and expenses incurred
10 thereby, including, but not limited to, reasonable attorneys' fees and costs.

11 6. This Court retains jurisdiction to enforce this Order.

12 7. The effective date of this Final Judgment is the date recited below.

13 8. Facsimile signatures by the parties and their respective attorneys shall be
14 deemed by the signatories to have the same effect as original signatures.

close the case

15 It is so ordered.

16 Dated this 21 day of Sept 2005.

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21 United States District Court Judge

22 SO STIPULATED,

23 MOSES & SINGER LLP

24 Dated: _____

25 By: _____

26 *Philippe A. Zimmerman*
Philippe A. Zimmerman

27 Attorneys for Plaintiff,
28 Tai Wing Wah Restaurant and Bakery, Inc.

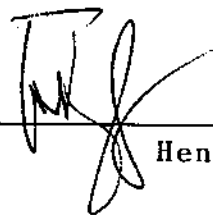
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TAI WING WAH RESTAURANT AND BAKERY,
INC.

Dated: 20050825

By: _____

[Name]



Henderson N H Tse

REPPERT KELLY, LLC

Dated: _____

By: _____

Bing Li

J. Vincent Reppert

Attorneys for Defendant,
Star Mark Management, Inc.

STAR MARK MANAGEMENT, INC.

Dated: _____

By: _____

[Name]

1 TAI WING WAH RESTAURANT AND BAKERY,
2 INC.

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By: _____
[Name]

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6 REPPERT KELLY, LLC

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By: _____

Bing Li
J. Vincent Reppert

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11 Attorneys for Defendant,
12 Star Mark Management, Inc.

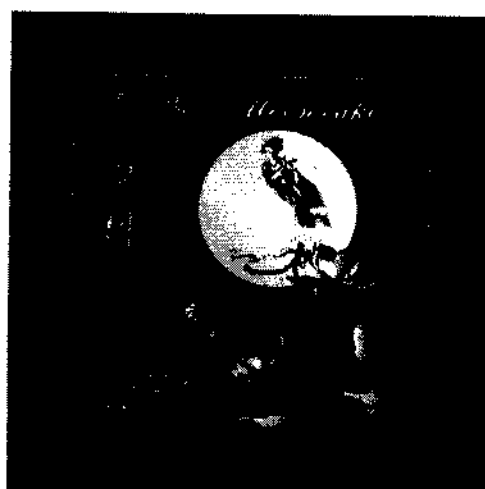
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14 STAR MARK MANAGEMENT, INC.

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16 Dated: _____

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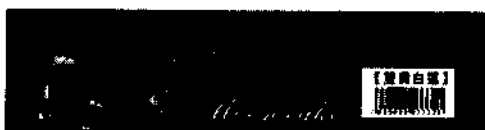
Attachment to Consent Judgment and Permanent Injunction
Tai Wing Wah Restaurant and Bakery, Inc. v. Star Mark Management, Inc.
Case No. 04 Civ. 3945 (JBW)



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September 20, 2005

BY HAND

Hon. Cheryl L. Pollak, U.S.M.J.
United States District Court
Eastern District of New York
255 Cadman Plaza East
Brooklyn, NY 11201

**Re: Tai Wing Wah Restaurant and Bakery Inc.
v. Star Mark Management, Inc.
Case No.: 04 cov. 3945 (JBW) (CLP)**

Dear Judge Pollak:

We represent Plaintiff in the referenced matter.

On behalf the parties herein, please find enclosed a proposed Consent Judgment and Permanent Injunction for Your Honor's consideration.

The submission of this proposed order was unfortunately delayed as a result of an illness in the family of an owner of Defendant.

Respectfully submitted,


Philippe Zimmerman

Enc.

cc: Bing Li, Esq.